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SUBJECT: President Fernandez and Opposition Leader Vargas on the New
DR Constitution

REF: A) 08 SDO 1608, B) SDO 9, C) SDO 31, D) 09 SDO 1162, E) 09 SDO
765, F) SDO 566

SUMMARY

¶1. The Dominican Republic formally promulgated a new Constitution, composed of 277 Articles and 19 Transitional Articles, on 1/26/10. President Leonel Fernandez, after praising his mentor, former President Juan Bosch, Bosch's Constitution of 1963 and the 1965 "April Revolution" that sought its restoration (and saluting that revolution's resistance to the subsequent U.S. military intervention), hailed the new Constitution as an example of "the current of constitutional modernism" in keeping with post-WWII European counterparts. Fernandez opined that the new Constitution reduces executive powers, creates important mechanisms for the exercise of direct democracy, fortifies individual and social rights, and strengthens the judiciary, principally through the establishment of a Constitutional Tribunal. Opposition Revolutionary Democratic Party (PRD) leader Miguel Vargas Maldonado lamented the fact that Fernandez had opted for a Revisionary Assembly (made up of both houses of Congress) rather than an independent Constituent Assembly to draft the new Constitution, stressed the importance of the document's prohibition of direct presidential re-election, which he hoped would minimize the use of State resources in campaigns, and challenged the President (and his Dominican Liberation Party (PLD)) to fulfill his prior pledge and join with the PRD in passing a Political Parties Law in advance of the upcoming May 16 congressional/municipal elections. Embassy has provided an assessment of how the new Constitution affects the judicial system, and will be providing similar analyses with respect to the other branches of government, civil liberties, and human rights. END SUMMARY.

PRESIDENT FERNANDEZ

¶2. Fernandez began by noting that 1/26, the birthday of the "Father of the Nation," Juan Pablo Duarte, was the appropriate day for the new Constitution's promulgation since, even before the DR's independence, Duarte conceived of a constitution that would protect against "arbitrariness, abuse [and] despotism in the exercise of power." However, Fernandez noted, the country's 37 previous constitutions generally furthered the political interests of those ruling the country at the time. He explained, "The reason for so many constitutional reforms was a lack [...] of political stability, which itself was the fruit of weaknesses in our democracy and a lack of economic and social development."

¶3. Fernandez observed that the 1963 constitution, promulgated during the short presidency of anti-Trujillo leader Juan Bosch, included a new element in the DR's system: "social constitutionalism" - i.e., the right to education, health, lodging, retirement and pensions. He praised the "Revolution of April 1965," which followed the overthrow of the Bosch government, and that rebellion's resistance to "foreign (i.e., U.S.) military occupation," for aiming to restore the 1963 constitution.

(COMMENT: Although both the PLD and the opposition PRD claim to be ideological heirs of Bosch, neither party proposed reviving the 1963 constitution. END COMMENT).

¶4. Fernandez went on to claim that the new Constitution fits into a "modern constitutional trend" that began after World War II (citing the Italian, German and French constitutions of 1947, 1949 and 1958, respectively). Specifically, Fernandez pointed to Article 7, which states that the Dominican Republic is a "Social and Democratic State of Rights." This, he said, means that it is a state "founded on respect for human dignity, (for) fundamental rights, (for) labor, (for) popular sovereignty, and (for) the separation and independence of public powers."

¶5. Fernandez then highlighted the new constitution's provisions

to:

-- Eliminate the President's ability to annul municipalities' decisions or to appoint mayors or councilmen if/when vacancies arise (as had been permitted under the 1994 constitution).

-- Nullify acts that may be taken by persons who alter or subvert the constitutional order, as well as any decision made due to military force. (Note: Fernandez added that this provision will ensure that the DR will avoid future coups, and thus, "never repeat the bitter and tragic experience of September 1963[.]" See also reftel C. End Note)

-- Guarantee fundamental rights, as well as several "collective and diffuse rights."

-- Permit the use of "popular initiatives" with respect to submitting legislative ideas before Congress and "referenda" with respect to "whatever matter is submitted" to the people for their decision (see also: reftel E). (COMMENT: Some of the President's critics suggest that he could attempt to use these mechanisms to revise the new Constitution's prohibition of direct presidential re-election; when questioned on this by a French journalist, Fernandez explicitly denied that he would be a candidate in 2012. END COMMENT).

-- Allow the election of (7) congressmen by Dominicans residing outside the DR and the election of "National Deputies," which would open the door for minor parties to gain representation in Congress.

-- Protect "privacy and honor," as well as intellectual property and professional secrets (including for journalists).

-- Alter the judicial system in a "profound and radical" manner, including creation of a Constitutional Tribunal (see reftel B).

¶6. Finally, Fernandez stressed that the new Constitution was subjected to a long and comprehensive national debate and approved by consensus, rather than being a partisan document as were so many of its predecessors.

MIGUEL VARGAS MALDONADO

¶7. PRD leader Miguel Vargas Maldonado, on 1/25, gave a nationally-televised speech supporting the new Constitution, underscoring the PRD's particular stance on certain issues, and proclaiming the party's self-appointed role as a watchdog for its implementation and operability, whether in government or in the opposition. He first defended the PRD's decision to participate in the drafting of the document, even though the party has consistently upheld the principle that constitutions should be altered by means of a Constituent Assembly, a view he claimed was shared by most Dominicans. Vargas criticized President Fernandez, who had previously supported this position, but then "forgot his old promises" and assigned the task to the Congress as a Revisionary Assembly. He then explained that, to avoid being marginalized from the process in a legislature dominated by the President's Dominican Liberation Party (PLD) and its Social

Christian Reformist Party (PRSC) allies, the PRD chose to "participate actively and intensively" in debating and revising the reform proposal submitted by Fernandez in September 2008 (reftel A).

¶8. Vargas then highlighted the following achievements in the new Constitution:

-- Maintenance of a system of nationality that combines jus soli and jus sanguinis (details: reftel D);

-- The election of representatives of the ten percent of Dominicans who reside abroad;

-- "Modernization" of the national police and the armed forces;

-- "Democratization" (i.e., a guarantee that the second largest party will have two of the eight seats) of the National Judicial Council, which must perform its duties with "transparency," as the leading rule-of-law NGO "FINJUS" as urged (Ref B);

-- Establishment of a Constitutional Tribunal;

-- The prohibition of the consecutive re-election of presidents, thereby "stimulating democratic alterations (between

parties/leaders)" and reducing the incentive of the sitting President to use State resources to advance his party's electoral interests, adding that this occurred in 2008 (when Fernandez beat Vargas).

¶9. The PRD leader also commented on the need for Congress to pass an immense amount of legislation to implement the changes brought about under the new Constitution, including:

-- A law on constitutional procedures and the Constitutional Tribunal;

-- A law on public administration;

-- A law detailing the process of public participation via referenda and "popular legislative initiatives;"

-- A law defining the jurisdiction of the two, new tribunals for electoral disputes and administrative cases.

¶10. Vargas called on President Fernandez to honor his oral agreement with Vargas and instruct the PLD to work with the PRD to pass a law on political parties. (COMMENT: Even if such a law is passed when Congress resumes in February, the Central Electoral Board has made it clear that insufficient time will exist to implement its provisions before the 5/16 congressional/municipal elections. END COMMENT). The PRD leader concluded by noting that his party will act as guardian of the new Constitution.

COMMENT

¶11. While the DR has had 38 constitutions since its independence in 1844, this appears to be the first one developed through a lengthy process of dialogue with the opposition, rather than forced through by a caudillo or rushed into print as a response to a political crisis. The fact that its formal adoption was by a vote of 200-0 demonstrates the bipartisan nature of the document (if not the power Fernandez and Vargas have over their respective parties and allies) and could mean that this constitution, in contrast to its numerous predecessors, may actually have some staying power. Embassy has provided an analysis of the Constitution's provisions on the judicial system (Ref B), and will be sending in analyses on other aspects in coming weeks. END COMMENT

¶12. Minimize Considered.
Lambert